



## MONTGOMERY COUNTY ETHICS COMMISSION

Stuart D. Rick  
*Chair*

Kenita V. Barrow  
*Vice Chair*

May 21, 2013

Advisory Opinion 13-02-003

Marc Hansen, County Attorney

Dear Mr. Hansen:

On November 29, 2012, the Montgomery County Ethics Commission issued guidance concerning the application of section 19A-16 of the Public Ethics Law to County officials' attendance at holiday parties and other events sponsored by persons with business before the County.<sup>1</sup> That guidance reviewed the general prohibition on a County official's receipt of gifts from persons who do business with, are regulated by, or lobby the official's agency or who otherwise have economic interests (different from those of the general public) that the official may substantially affect in performing his or her duties. The Commission discussed the availability and limits of certain exceptions in the Public Ethics Law to the general prohibition.

You have requested an advisory opinion on behalf of the County Executive and County Council as well as the Chief Administrative Officer and the Council Staff Director, about the parameters of the Commission's guidance in light of section 19A-16(e)'s exclusion from the gift prohibition for "unsolicited gifts to a County agency." You have proposed that a County official's free attendance at an event sponsored by a partner with the County in a public/private partnership should be acceptable as a gift to the County if:

- At least 25 people (other than County employees) have been invited or the press has been invited to the event; and
- The event is designed to garner support for a program the County supports, marks a milestone in a County project, or celebrates a significant milestone of an entity or individual that plays (or played) a significant role in the Community.

You have asked if the Commission agrees with your proposal.

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<sup>1</sup> <http://www.montgomerycountymd.gov/Ethics/Resources/Files/pdfs/holidaypartyguidance.pdf>

The Commission appreciates your desire to set standards for the County's acceptance of gifts. We presume from your request that the County does not have such standards at present. While the Commission is not the ultimate arbiter of what constitutes an acceptable gift to a County agency, we welcome the opportunity to work with you to set those standards.

In general, we would envision the following in standards for a County agency's acceptance of gifts:

- Specification of those County officials who are authorized to determine whether a gift to a County agency is acceptable;
- A determination by the authorized official that acceptance of the gift will aid or facilitate the work of the County agency; and
- A determination by the authorized official that acceptance of the gift would not reflect unfavorably on the ability of the County agency, or any employee of the agency, to carry out its responsibilities or official duties in a fair and objective manner, and would not compromise the integrity or the appearance of the integrity of its programs or any official involved in those programs.<sup>2</sup>

Of the elements in your proposal, the element for events that are designed to garner support for a program the County supports coincides with the standards we envision.

Please note that we do not envision that a gift a County employee would be prohibited from accepting must likewise be declined by the County. To the contrary, section 19A-16(e) excludes gifts accepted by a County agency from the prohibition applicable to gifts to County employees from a "restricted source."<sup>3</sup> When a gift is from a "restricted source," there are different considerations if the gift is made to a County agency rather than an individual employee. However, if benefits of the gift will accrue to an individual employee, the gift may require heightened scrutiny to ensure that its acceptance would not reflect unfavorably upon the County or its employees. This heightened scrutiny would include an evaluation of the significance of the employee's role in any matter affecting the donor and whether the donor's purpose is to influence or curry favor with County officials. Of course, if there is a legitimate public purpose

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<sup>2</sup> Factors to be considered in making these determinations could include, for example, the frequency of gifts to the County from the same source (as frequent gifts could create an appearance of a relationship between the County and the donor as part of which favors might be granted); and other expected recipients of the gift on the same occasion.

<sup>3</sup> Under section 19A-16(c) of the County Ethics Code, sources or donors that are restricted include any individual or organization that the public employee knows or reasonably should know:

- (A) is registered, or must register, as a lobbyist on a matter that is or could be considered by the County agency with which the public employee is affiliated;
  - (B) does business with the County agency with which the public employee is affiliated; or
  - (C) owns or operates a business that is regulated by the County agency with which the public employee is affiliated
- ...

in connection with an activity, the County could pay for its participation in lieu of accepting a gift from an interested party.

In the context of asking the Commission for its views on setting standards for the County's acceptance of gifts, you have asked the Commission to address three hypothetical scenarios.<sup>4</sup> You have offered these scenarios as representative of the type of event that the County Executive, County Council, Chief Administrative Officer, and the Council Staff Director generally believe County employees ought to attend as part of their official duties.

As noted above, the Commission is not the ultimate arbiter of what constitutes an acceptable gift to a County agency. As for County employees accepting gifts personally, the Commission notes that the first two scenarios contemplate that both elected and non-elected officials would be invited to the event. Due to the exception at 19A-16(d)(5) that permits an elected official (or that official's designee) to accept gifts of free attendance at charitable, cultural, civic, labor, trade, sports or political events, the answer could be different for each group. These events could be deemed to be "civic" or "trade," so elected officials (or their designees) would be able to attend them under the exception at 19A-16(d)(5); however, that exception does not apply to non-elected officials. The third scenario, which deals with the type of event that was the impetus for our

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<sup>4</sup> These scenarios are:

I. A restricted donor, a business entity in partnership with the County to develop County owned property, hosts a "groundbreaking" event at the project site. The project fosters growth near a metro stop as well as affordable housing. Elected and non-elected County officials, who have worked on the project, are invited to the groundbreaking by the County's "partner"---a restricted donor. Food and non-featured entertainment is provided. Taking into account all expenses, the cost to the restricted donor exceeds \$50 per person. The County Executive and some department directors will be expected to make a "few appropriate comments" at the groundbreaking ceremony. The press has been invited to cover the event. Can an elected official accept the partner's invitation to attend this event? Can a non-elected public employee who has worked on this project accept the partner's invitation to attend this event?

II. The Montgomery County Chamber of Commerce hosts an annual awards dinner recognizing business leaders in Montgomery County. Tables at the affair are purchased by local businesses, many of which are restricted donors. Either the Chamber, or a restricted donor, invite County elected officials and other County employees to attend the event. The County Executive and the Chief Administrative Officer determine that attendance at this event is consistent with the government's mission of promoting economic development in the County. In this regard, it is important to note that under §2-64L of the Montgomery County Code, the Department of Economic Development is responsible for "promoting and supporting . . . industrial and commercial development in the County, including the technology and hospitality industries." Can an elected official accept an invitation from the restricted donor to attend this event? Can a non-elected public employee, including an employee of the Department of Economic Development, accept an invitation to attend this event?

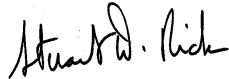
III. A restricted donor extends an invitation to Executive Branch employees through the Chief Administrative Officer (and to Legislative Branch employees through the Council Staff Director) inviting a specific number of public employees to attend a holiday reception. The Chief Administrative Officer (or Council Staff Director) determines that it is in the public interest for County employees to attend this event because of the opportunity to communicate with a wide variety of community leaders. May the Chief Administrative Officer (or Council Staff Director for Legislative Branch employees) request public employees to attend the event?

November 29, 2012, guidance, would not fall under any of the gift exceptions in the Public Ethics Law for the reasons stated in that guidance.<sup>5</sup>

Finally, as an alternative to your proposed application of section 19A-16(e), you have requested that the Commission use its authority in section 19A-16(d)(9) to issue a class waiver designating the gifts described in your proposal as exempt from the restrictions on personal gifts. In order for the Ethics Commission to issue a waiver or an exemption, the Commission must find that accepting the gift or class of gifts is not detrimental to the impartial conduct of the business of a County agency. As stated earlier, the gifts you have described would allow “restricted donors” to discriminate among County employees by targeting those employees they would like to influence. And in your first scenario, restricted donors would be allowed to give gifts to County employees specifically because the donor is doing business with the County. That, however, is precisely why the gifts are restricted. While there may be instances where gifts falling within the described classes would be benign, the Ethics Commission cannot find that the acceptance of all possible gifts within these classes would be devoid of detriment to the impartial conduct of County business. Therefore, the Ethics Commission declines to issue the requested class waiver. Of course, the Commission will consider waivers on a case-by-case basis as specific matters arise.

Thank you for your request. We look forward to continuing to work with you on this issue.

Sincerely,



Stuart D. Rick,  
Chair  
Montgomery County Ethics Commission

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<sup>5</sup> You have asserted that a public employee’s free attendance at a holiday reception could be permissible under the exception in section 19A-16(d)(5) because “these receptions are certainly ‘political’ in nature -- at least in the broadest sense of the term.” In the Commission’s view, a heavily attended party or celebratory activity with people from diverse sectors of the community would not be a “political event” as that term is used in 19A-16(d)(5) unless there is an express political purpose for the event, such as for political fundraising. Otherwise, any event, including those enumerated in the exception (charitable, cultural, civic, labor, trade, and sports events) and a broad range of others – only to be limited by what could be termed “political” in its broadest sense – would be exempted from the prohibition. This reading would render the inclusion of the other enumerated events, as well as the gift prohibition as applied to elected officials’ attendance at events, effectively meaningless.